

I. POLICY

This policy sets forth guidelines for arrest and citation procedures.

II. ARREST AUTHORITY

Troopers have jurisdiction to arrest anywhere in the state of North Carolina except for such property that may be designated as exclusive federal jurisdiction. Members are expected to be familiar with any territorial jurisdictional issues that may exist within their assigned area of responsibility. The subject matter jurisdiction for Troopers is set out in Articles 3 and 17 of Chapter 20 of the General Statutes. All members are expected to be knowledgeable of their statutory authority contained in these statutes.

Authority to Arrest or Detain While Off-Duty

- It is the general policy of the Patrol that enforcement action should not be taken by members while off-duty but rather reports of any suspected or observed criminal activities should be made immediately to on-duty authorities.
- However, members who are off-duty may arrest or detain violators in compliance with this subsection:
 - When off duty and within the legal boundaries of this State, a member may make an arrest or detain a person only when:
 - A violent crime has been committed his/her presence; and
 - Perpetrator will not be apprehended unless immediately arrested or detained or may cause physical injury to himself/herself or others unless immediately arrested or detained; and
 - Member identifies himself/herself as a law enforcement officer and possesses his/her badge and identification as a member of the Patrol; and
 - Member complies with Patrol directives governing arrest
 - A member who makes an arrest or detains a person pursuant to the provisions listed above shall immediately contact appropriate on-duty law enforcement officials and must surrender the person detained to such law enforcement officials unless such contact or surrender is impractical

- Under no circumstances shall a member attempt to stop or engage in the chase of a vehicle unless operating an authorized Patrol vehicle

III. ENFORCEMENT POLICY

Charging Policy

- Members shall issue a North Carolina Uniform Citation or arrest for all definite, clear-cut and substantial violations. Members shall not issue citations or make arrests for frivolous, technical, or borderline violations. Factors such as race, sex, economic standards, familial, political or fraternal affiliation shall not influence a member in any manner whatsoever. Every arrest made or citation issued shall be in accordance with North Carolina law and Patrol policy. Members who violate the law or Patrol directives may be subject to discipline by the Patrol.

Warning Tickets

- Warning tickets may be issued by members for the following reasons:
 - Upon discovery of a mechanical defect in a vehicle that needs correction but which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws
 - For conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws
 - To require a driver to produce his/her driver's license or motor vehicle registration card at a later time

IV. EXERCISING POWER OF ARREST

Infractions

- A member may not arrest, but may issue a citation to any person he/she has probable cause to believe has committed an infraction (N.C.G.S. § 15A-1113).
 - A member who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period of time in order to complete and serve the citation. An infraction and a misdemeanor may be charged on the same citation.
 - Reasonable force may be used to stop and detain a person for the purpose of issuing a citation. A person who resists, obstructs, or delays a law enforcement officer in the issuance of a citation for an infraction or in bonding for an infraction may be charged with obstructing or delaying an

officer in the performance of his/her duties (N.C.G.S. § 14-223) and be arrested for that offense.

- If the person who is charged with an infraction is a nonresident from a state that is not a member of the nonresident violator compact, a member shall take the person before a magistrate for bonding. The Administrative Office of the Courts is now printing a list of states in the North Carolina Uniform Citation book which are not members of the compact.

Misdemeanors

- A member may arrest, as opposed to issuing a citation to, a person for committing a misdemeanor only when the requirements of N.C.G.S. Chapter 15A have been met and;
 - The misdemeanor charged is a violation of the Motor Vehicle Act which, upon conviction, will result in the suspension or revocation of a person's license under the laws of North Carolina, and the suspect is from a state which is a member of the Nonresident Violator Compact; or
 - The misdemeanor charged is **any** violation of the Motor Vehicle Act and the suspect is a nonresident from a state which is not a member of the *Nonresident Violator Compact*, provided that members may cite a nonresident who has substantial, consistent and recurring contacts with the State of North Carolina (e.g. a commuter); or
 - The misdemeanor charged is a violation of the Motor Vehicle Act and would result in the suspension or revocation of a person's license under the laws of North Carolina and the person is a resident of North Carolina, provided that if a resident appears to be capable of operating the vehicle in a safe and lawful manner and the member has reasonable grounds to believe the offender will appear as cited, a citation should be issued instead of arresting the individual; or
 - The suspect is a resident of North Carolina, and the member has reasonable grounds to believe the suspect will not submit to the jurisdiction of the court; or
 - The misdemeanor charge is not a violation of the Motor Vehicle Act and the suspect is **not** a resident of North Carolina; or
 - The misdemeanor is one involving violence and arrest reasonably appears necessary in order to prevent violence or damage to property; or
 - The person charged seems to be dangerous to himself/herself, others or property

Felonies

- A member who charges a person with committing a felony shall always arrest the suspect when the requirements of N.C.G.S. Chapter 15A have been met.

V. FINGERPRINTING PROCEDURES

Duties of the Arresting Member

- Pursuant to N.C.G.S. § 15A-502, members who arrest a suspect for commission of a felony or certain misdemeanor offenses included in subsection (a2) shall fingerprint the suspect and forward the fingerprints to the State Bureau of Investigation.
- Members shall fingerprint and photograph any arrestee who cannot be identified by a valid form of identification, if the arrestee is charged with:
 - An offense involving impaired driving, as defined in N.C.G.S. § 20-4.01(24a), or
 - Driving while license revoked if the revocation is for an Impaired Driving License Revocation as defined in N.C.G.S. § 20-28.2.
- Members shall not take photographs or fingerprints of a suspect when the only offense charged is a Class 2 or 3 misdemeanor under Chapter 20 of the General Statutes. An exception to this prohibition exists when a suspect operates a motor vehicle on a street or highway, the person is cited for a motor vehicle moving violation, and the person does not produce a valid drivers license upon the request or the member has a reasonable suspicion concerning the true identity of the person or if the misdemeanors are listed in N.C.G.S. § 15A-502(a2).

VI. DEOXYRIBONUCLEIC ACID (DNA) COLLECTION PROCEDURES

Duties of the Arresting Member

- N.C.G.S. § 15A-266.3A and 15A-502A require the collection of a DNA sample for DNA analysis upon arrest for certain criminal offenses an exception to this requirement exists if the member determines that a DNA sample has previously been obtained and is stored in the State DNA Database
- DNA required to be obtained shall be obtained by the arresting member at the time of arrest or when fingerprinted unless the member makes a warrantless arrest, in which case the DNA sample shall not be obtained until the magistrate makes a determination that probable cause exists pursuant to N.C.G.S. § 15A-511
- A new DNA collection kit shall be used for each individual from whom a DNA sample must be collected

- Universal precautions are to be used when handling the DNA Collection Kit in accordance with Directive B.06 (Bloodborne Pathogens)
- Juvenile offenders N.C.G.S. § 7B-2201 (see Directive I.06)

VII. PROCEDURES FOLLOWING ENFORCEMENT ACTIONS

N.C.U.C. Citations

- When a member cites an offender to appear in court, he/she should cooperate with the offender in giving appropriate directions to the appropriate court and shall not accept any money, bail bond, bail bond card, securities, or other articles of value from the offender when cited for a felony, misdemeanor, or infraction violation; however, those members trained to enforce the laws pertaining to the transportation of commerce in and through the state may collect money for civil penalties issued for violations of North Carolina law.
- The member shall sign the citation, and request the offender to sign in the appropriate block on the original and deliver a copy of the citation to the offender. If the offender refuses to sign the citation, the member shall indicate such refusal by writing “refused to sign” in the defendant’s signature block.
 - If the offender is issued an e-citation it is not necessary to request the offender to sign the e-citation
 - E-citations shall not be used if the offender is arrested or otherwise taken before a magistrate or other judicial official
- Members shall deliver the N.C.U.C. to a judicial official of the General Court of Justice, for filing within five calendar days of issuance, or prior to the designated court date, whichever should come first
 - All e-citations shall be transmitted electronically to AOC by the issuing member by the end of his/her assigned shift

Members shall inform every accused person of the specific law he/she is charged to have violated. If facts are subsequently discovered which require additional charges to be filed, the offender shall be informed of the additional charges prior to trial.

Any member who cites or arrests any person shall comply with all of the requirements and procedures of N.C.G.S. Chapter 15A and any other applicable law, including.

- When a member arrests a person, he/she shall, without unreasonable delay, take the offender before a judicial official of the General Court of Justice as defined in N.C.G.S. Chapter 15A and as provided in this manual
- Upon arrest, the member shall, without unnecessary delay, advise the offender of his/her right to communicate with counsel, family and friends, and must allow him/her reasonable time and opportunity to do so

If facts discovered at a later date indicate additional definite, clear-cut and substantial violations, additional citations or other criminal process (criminal summons or warrant for arrest) shall be obtained and issued to the violator.

Implied Consent Summary Report (HP-327)

Any member who cites or arrests any person for an Implied Consent violation (N.C.G.S. Chapter 20-16.2) shall prepare an Implied Consent Summary Report (HP-327). The HP-327 will be submitted to the member's supervisor with their weekly paperwork. The district first sergeant or their designee shall ensure the HP-327 is delivered to the appropriate district attorney's office before the defendant's first court date.

If In-Car video of the stop exists **and** the District Attorney's office completes the request for video on page 2 of the HP-327, the district first sergeant, or their designee, shall ensure a video copy of the stop is completed. The copy should be delivered to the district attorney's office within 30 days of the returned request.

Under no circumstances should an original DVD be removed from the district office or should a copy be given to a defense attorney. All requests from defense attorneys should be redirected to the district attorney's office.

Juvenile Information: Refer to Directive I.06.

VIII. NONRESIDENT VIOLATOR COMPACT (NRVC)

North Carolina has joined with other states in a Nonresident Violator Compact (NRVC). The NRVC provides a driver from a Compact State is not to be bonded for motor vehicle violations, but issued a citation. The home state of the driver will revoke the driver's license if the driver fails to appear in court or pay the citation in a timely manner. The driver from a jurisdiction which is a member of the NRVC should not be arrested and bonded except for the following offenses:

- Felonies involving the use of a motor vehicle
- Death by vehicle (N.C.G.S. § 20-141.4)
- Driving while subject to an impairing substance (N.C.G.S. § 20-138.1)
- Driving a commercial vehicle while subject to an impairing substance (N.C.G.S. § 20-138.2)

- Driving by a person under 21 while drinking or after having consumed alcohol or controlled substance (N.C.G.S. § 20-138.3)
- Driving with open container after drinking (N.C.G.S. § 20-138.7A)
- Operating a commercial vehicle after consuming alcohol (N.C.G.S. § 20-138.2A)
- Operating a school bus, school activity bus, or child care vehicle after consuming alcohol (N.C.G.S. § 20-138.2B)
- Impaired Instruction (N.C.G.S. § 20-12.1)
- No operator's license (N.C.G.S. § 20-7)
- Possess fictitious, canceled, revoked, suspended or altered license, or counterfeit, sell, lend, or permit use of license by another or any other violation of N.C.G.S. § 20-30.
- Driving while (license) suspended, revoked or disqualified, or permitting an owned vehicle to be so operated. (N.C.G.S. § 20-28; N.C.G.S. § 20-34)
- Driving a commercial motor vehicle without being licensed to do so, or driving a commercial motor vehicle while license suspended, or subject to a disqualification or out of service order (N.C.G.S. § 20-37.12)
- Violations concerning the transportation of hazardous materials
- Violations of the fuel tax law

A driver from a state that is a member of the NRVC may under unusual circumstances be arrested and bonded for any other offense for which a mandatory court appearance is required by the Conference of Chief District Court Judges.

A member who charges a motorist from a reciprocating state with a violation of the Motor Vehicle Code covered by the NRVC shall issue the violator a citation and request the violator to sign the reciprocal agreement contained on the citation. A violator who agrees to comply with the citation but refuses to sign the citation is not required to be bonded. The member may write **refused to sign** in the signature block and give a copy of the citation to violator. Violators who refuse to agree to the reciprocal agreement, or who have committed an offense, for which the NRVC does not apply, shall be taken to a magistrate for bonding.

IX. ARREST OF DEAF PERSONS

In dealing with deaf or hearing-impaired persons, members must recognize impairment through the observation of their actions. Careful attention should be

made of the person's hands and movement. He/She may be reaching for a pen and pad in clothing or glove compartment as a means of communication, instead of reaching for a weapon. Clues that a person is deaf or has a hearing impairment are as follows:

- Appears alert but fails to respond to any sounds
- Points to the ears, or to the ear and mouth, perhaps while shaking the head
- Speaks with a flat or harsh, unintelligible monotone

The individual may initiate one of the following types of communication. If not, the member may try each to determine the most reliable by asking one question at a time that requires a short answer.

- **Sign Language.** Whenever possible, secure a qualified interpreter. (It may be necessary to use a family member or friend temporarily, in an emergency situation.)
- **Writing Notes.** Writing notes requires patience because of poor handwriting skills or shorthand used by some deaf persons.
- **Lip Reading.** The least reliable method, understanding only 30% of what is said under ideal lighting conditions.

In accident investigation situations, listen to both sides, being careful not to exclude the person who is deaf. Face the deaf person when speaking and communicate by writing notes.

The arrest of a deaf person requires the procurement of an interpreter under N.C.G.S. § 8B-2(d).

Procedure for procuring an interpreter for arrested deaf persons in interrogation, warning, notification of rights, arraignment, bail hearing or other preliminary proceeding:

- The Department of Human Resources provides a listing of qualified interpreters for the hearing impaired to the Clerk of Superior Court of each county. The appointment of an interpreter must be made by a judicial official of the appropriate court; therefore a local Magistrate is the first judicial official available on a 24-hour basis.
- The member arresting a deaf person must take the arrestee before a judicial authority (Magistrate) for appointment of an interpreter. If arrested for an offense for which a chemical analysis is to be given, an interpreter or waiver must be obtained before the test is given. No answer, statement or admission taken from a deaf person without a qualified interpreter present and functioning is admissible in court for any purpose.

- The deaf person entitled to the services of an interpreter may waive these services through a waiver approved in writing by the person's attorney. If the person does not have an attorney, the waiver approval must be made in writing by the appointing authority.

X. OPERATOR'S LICENSE TO REMAIN IN DRIVER'S POSSESSION

When an arrested person is allowed to drive his/her vehicle to a judicial official's office, he/she should have in his/her possession both his/her operator's license and the registration card for the vehicle he/she is operating. At no time shall the member escorting an arrested person keep these items in his/her possession while allowing an arrested person to drive his/her vehicle to the judicial official's office.

XI. ADDITIONAL PROCEDURES CONCERNING THE CARRYING OF CONCEALED HANDGUNS BY PERMIT HOLDERS AND QUALIFIED LAW ENFORCEMENT AND RETIRED LAW ENFORCEMENT OFFICERS

Due to the potential that persons contacted during the course of our duties may be lawfully armed with some type of handgun, the following procedure shall be followed:

- If a member is confronted with a person lawfully carrying a concealed handgun, the member should courteously and professionally seek information concerning the location of the handgun. Other instructions cautioning the person against making movements in the direction of the handgun may also be appropriate at this time.

Absent suspicious circumstances, the person shall not be disarmed. In rare instances when suspicious circumstances, based on sound articulable reasons, exist or develop to a degree to cause a member to perceive a threat to his/her or another person's safety, the person may be disarmed. When the decision to disarm the person is made, the member shall clearly and professionally communicate his/her intentions to the person and shall give clear and concise instructions. He/She shall attempt to explain that the handgun will be secured temporarily and will be returned upon the completion of the contact. After the contact is concluded, and if circumstances permit, a brief explanation to the person as to why he/she was disarmed may be appropriate.

- Upon disarming the person, the handgun shall be unloaded if it can be done safely. In all cases, the handgun shall be secured. The handgun shall not be placed back into a vehicle occupied with other passengers but shall be placed in the Patrol vehicle or in the trunk of the violator's vehicle.
- After the member has completed all business with the person whom he/she has disarmed and no custodial arrest is to be made, and there is no violation of the concealed handgun statute, the member, just prior to leaving the scene, shall return the handgun and ammunition. Members shall not return a

loaded handgun, but shall place it in the vehicle, trunk, or other location where the member feels secure.

If the handgun owner is to be placed under arrest for any reason and the handgun is not seized for evidence, the following procedures shall be followed:

- If the vehicle is to be towed, it is permissible, with the consent of the handgun's owner on a **signed** Consent to Tow, Remove, or Store Vehicle or Leave Vehicle at the Scene (HP-305), to leave the handgun secured in the trunk of the vehicle.
- If the vehicle is to be left at the scene, the member shall take possession of the handgun, complete a Seized Property Report (HP-52), with a copy to the owner, and secure the handgun in the evidence locker at the appropriate Highway Patrol District Office until such time as the lawful owner of the weapon may retrieve the handgun. Should the subject be released from custody by lawful authority before the handgun can be secured in the evidence locker, the member shall return the handgun to the lawful owner upon release from custody or, if appropriate, to a sober responsible adult designated by the owner after the owner signs Form HP-52.
- If a sober, responsible adult takes possession of the vehicle, the member may, at the request of the handgun owner leave the handgun in the trunk or other locked compartment of the vehicle.

If the handgun owner is to be placed under arrest for any reason and the handgun is seized for evidence, the member shall complete a HP-52 and secure the handgun in the evidence locker at the appropriate Highway Patrol District Office.

If the handgun owner has a concealed carry permit, the charging officer shall ensure the Sheriff's Department or other governmental agency (for out of state permit holders) which issued the permit to carry a concealed handgun is notified through the Division of Criminal Information Computer System (DCI) for any violation of the permit. If the handgun owner is a qualified law enforcement officer or qualified retired law enforcement officer, the charging officer shall ensure the law enforcement agency where the officer is employed or from which he or she retired is notified through DCI of any violation that may affect on the officer's or retiree's continued eligibility to carry a concealed firearm.

At any time when a seized weapon is returned, the owner shall be required to sign the HP-52.